

**MINUTES**  
**UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING**

**January 8, 2004**

**Board Members Present:**

Judy Lever, Chair; Kenneth Alkema; Cullen Battle;  
Michael Brehm; Carlton Christensen; David Cunningham  
Bill Doucette, John Newman; Dianne Nielson; Lowell  
Peterson; Thomas Probert; Scott Widmer

**Staff Members Present:**

Dennis R. Downs, Executive Secretary; Brad Johnson, UST  
Executive Secretary; Scott Anderson; Cheryl Prawl,  
Raymond Wixom, Deborah Ng, Chris Bittner, Boyd  
Swenson, Don Verbica, Rusty Lundberg, Rick Page

**Others Present:**

Dave Ormond, Dan Shrun, Kris Snow, Robert Tekach,  
Richard Rathbun, Walton Levi, Clint Wathey, Scott Reid,  
Craig Galli, Hal Jaussi, Peter Noteboom

- I. The meeting was called to order at 1:05 p.m.
- II. It was motioned by Bill Doucette and seconded by Scott Widmer, and unanimously carried that the December 11, 2003 Board Meeting minutes be approved.

**III. Underground Storage Tank Update - Brad Johnson**

<b>UST STATISTICS REPORT</b>	<b>November</b>	<b>December</b>	<b>Difference from November</b>
Number of current tanks with a Certificate of Compliance	3,965	3,963	(2)
Number of Tanks with a Certificate of Compliance on the PST Fund	3,486	3,482	(4)
Number of tanks regulated	4,153	4,144	(9)
Number of LUST Sites closed to date	3,649	3,657	8
Total PST sites with claims or expected claims	483	483	0
PST Fund Balance	(\$64,450,129.00)	(\$64,882,638.00)	(432,509.00)
PST Assets Total	\$9,948,736.51	\$9,552,208.00	\$3,96,528.51
Loan Fund – Total Loans Made to Date	68	68	0
Total Amount Loaned to Date	\$1,847,797.60	\$1,847,797.60	0

Mr. Johnson stated that he will be modifying the way the statistics are currently presented to the Board. The statistics will be broken out into three categories: program statistics, financial statistics, and enforcement statistics. The information provided will also include historical trends, and will be included in the monthly board packets. If the Board has any suggestions or recommendations on how they would like the information presented, please contact Mr. Johnson.

#### **IV. Solid Waste Program**

Stipulation and Consent Order between the Board and Nielson Construction  
(Board Action Item) – Rick Rathbun, Attorney General's Office

Mr. Rathbun requested a Stipulation and Consent Order be approved between the Board and Nielson Construction. The information for this Consent Agreement came to the Attorney General's Office originally, and consequently, was handled through that office and then brought to the attention of the Division of Solid and Hazardous Waste. After receiving information concerning Nielson Construction, the Attorney General's Office executed a search warrant and confirmed that waste materials had been buried on their site in the past. (EPA and its contractors excavated 18 drums). Under a consent order with EPA, Nielson then completed a removal action, disposing of excavated drums, debris and soils. The Consent Order requires the company to pay a penalty amount of \$10,000.00 to the State of Utah.

The public comment period for the proposed Stipulation and Consent Order began on November 20, 2003 and ended on December 30, 2003. No comments were received.

Craig Galli, Attorney representing Nielson Construction, stated that approximately fifteen personnel from EPA were present during the cleanup and EPA's costs were substantial. The EPA did submit response costs, and Nielson Construction reimbursed the EPA for its response costs in the amount of approximately \$25,000.00.

David Cunningham asked if the EPA is satisfied that they have found all of the drums? Mr. Rathbun responded that both the EPA and the State of Utah are satisfied that they have found all the contaminants.

**\*\*It was motioned by Scott Widmer and seconded by Bill Doucette, and unanimously carried that the Stipulation and Consent Order between the Board and Nielson Construction be approved.**

#### **V. Used Oil Program**

Stipulation and Consent Order between the Board and Safety-Kleen  
(Board Action Item) – Cheryl Prawl

**Lowell Peterson declared a conflict of interest and informed the Board that he would not participate in any discussion or voting that might take place concerning this matter.**

Safety Kleen was issued a Notice of Violation based on an inspection that occurred on February 12, 2003. The Notice of Violation was issued in response to the finding that Safety Kleen was using expired halogen test kits to determine whether used oil it was transporting had been mixed

with hazardous materials. To resolve the Notice of Violation, a proposed Stipulation and Consent Order has been negotiated with Safety-Kleen in the amount of \$3,600.00.

The 30-day public comment period on the proposed Stipulation and Consent Order began on November 7, 2003 and ended on December 6, 2003. No comments were received.

Bill Doucette stated that Division personnel identified that the test kits were expired, but Safety-Kleen knew they were expired and chose to use them anyway, based on their discussion with the manufacturer of the test kits. Cheryl Prawl stated that as soon as the Division clarified that the expired test kits could not be used, Safety Kleen stopped using them immediately. The 10% penalty reduction was given to Safety Kleen because of their quick reaction to correct the problem.

Judy Lever asked if there is confirmation that the kits have been destroyed? Cheryl Prawl stated that other states do allow expired test kits to be utilized, so Safety-Kleen may have sent them out of state. The only manufacturer that produces these kits has verbally stated that the kits are good, however, they have never given an official letter backing up the warranty on the expired test kits.

Ken Alkema asked how has it been confirmed that the oil that was released, that was tested with these expired kits, did not contain halogens? Cheryl Prawl stated that oil was collected from the customers and shipped to the reprocessing facility out of state, but was then re-tested at that facility for halogens. Ken Alkema asked the purpose of the initial test? Cheryl Prawl stated that the Federal Rules require the transporter to test, to make the determination that the halogens are less than 1,000 parts per million. Therefore, if they are utilizing expired test kits, the determination of halogens is unknown. Ken Alkema stated that by the reprocessing facility double-checking the oil, they could verify the oil did not contain halogens.

**\*\*It was motioned by Bill Doucette and seconded by Carlton Christensen, and majority ruled that the Stipulation and Consent Order between the Board and Safety Kleen be approved. Lowell Peterson recused himself from the vote.**

## **VI. Commercial/Federal Facilities**

Aragonite has submitted a variance request, pursuant to R315-2-13 of the Utah Hazardous Waste Management Rules to substitute total hydrocarbon (THC) monitoring in the incinerator stack gas for CO monitoring.  
(Board Action Item) – Don Verbica and Boyd Swenson

**Lowell Peterson declared a conflict of interest and informed the Board that he would not participate in any discussion or voting that might take place concerning this matter.**

Aragonite has submitted a variance request to substitute total hydrocarbon monitoring in the incinerator stack gas for carbon monoxide monitoring.

The 30-day public comment period on the proposed Stipulation and Consent Order began on December 9, 2003 and ended on January 7, 2004. No comments were received.

Bill Doucette stated that the regulations will soon be allowing either a THC or a CO continuous emissions monitor in terms of a measurement, but there are different measures of incineration efficiency, and asked how the Division felt about this change? Don Verbica stated that the Division is supportive of the change.

Michael Brehm questioned if any new operational data collected in the last month would change the basis for this request? Boyd Swenson stated that the data consistently shows what the Division has seen in the past. He stated that EPA acknowledges that CO is a conservative measurement. (Sometimes when CO is high you don't have unburned organics and other times you do.) Whereas, THC is a direct measurement. In that sense it is conservative. The alternative is more of a direct measurement of looking for unburned organics.

Cullen Battle stated that it would be beneficial to identify what specific regulation applies for granting a variance. Mr. Battle stated that he believes that Rule 315-8-15 is what the Board is granting a variance from, which is the general operating requirements for incinerators. Do those rules specifically allow for variance? Don Verbica stated that the rules do not specifically state that facilities cannot have a variance. The Division's rules have a provision that since the Division is an authorized program, a variance can be granted for up to one year. Mr. Battle asked if this variance would be under the general rule allowed for variance. The Division's general rule regarding variances states that "variances will be granted by the Board only to the extent allowed under Federal Law". A comparable set of rules in the Federal Regulations also state this information. Mr. Battle stated that he would be more comfortable if a standard was set before him that clearly defined rules for granting a variance.

Judy Lever stated that this topic is anticipated to be discussed at the next Board meeting.

Dianne Nielson stated that two different issues are at hand. The first is does the Board have the authority to grant the variance based on the language. The other issue deals with what the criteria should be. The focus that Mr. Rathbun has provided was used as the authority for granting the variance except for in the case where we would otherwise be prohibited by Federal law. The issue of justification or criteria for evaluating the variance is important and would be helpful and should be added when discussing variances. The concern in this issue leans more to not whether we have the authority to grant the variance, but the basis for doing so. Mr. Battle stated that the case being discussed is a good example of what would meet the ordinary criteria for granting a variance.

Mr. Rathbun clarified that the statute on variances does refer to undue or unreasonable hardship as a finding by the Board when a variance is requested. This statute can be found in the Hazardous Waste Act, Section 19, 6-1-11.

Scott Widmer asked that to clearly understand the rule that the company is seeking a variance from, he would like to know if it is a RCRA Rule, or the BIF Rule?

Don Verbica stated that once they become subject to the MACT standards, they will be subject to those standards under MACT and the air quality rules, and no longer subject to the current permit standards. Mr. Widmer stated that there is a regulatory mechanism that shifts them from Solid and Hazardous Waste over to Air Quality, so the rules stay the same but will no longer apply to this facility.

Michael Brehm asked if Mr. Verbica is comfortable with the precedence this may set on other facilities if this variance is approved? Mr. Verbica stated that there are only 2 other facilities that possibly would make this request and the Division is comfortable with the Board approving the variance.

**\*\*It was motioned by Ken Alkema and seconded by Michael Brehm, and majority ruled that the variance request, pursuant to R315-2-13 of the Utah Hazardous Waste Management Rules to substitute total hydrocarbon (THC) monitoring in the incinerator stack gas for CO monitoring be approved. Lowell Peterson recused himself from the vote.**

## **VII. Chemical Demilitarization**

TOCDF Update – Chris Bitner

On January 7, 2004, TOCDF resumed processing of VX. (Since late November, VX has not been processed, except for a few days after Christmas.) The delay of processing VX is due to a moisture problem in the stack DAAMS monitoring system. The stack DAAMS monitoring system is used to confirm the presence of chemical agent in the ACAMS alarms. There is no problem with the ACAMS, and TOCDF believes that they have solved the moisture problems with the DAAMS. The Division staff is currently reviewing that data. Also, the liquid incinerator VX trial burn is now scheduled for the week of January 19, 2004.

Dale Ormond, TOCDF, clarified that the stack DAAMS were not the problem. The problems were in the ducts. (A subsequent discussion with other TOCDF personnel confirmed that the moisture problem affected both the stack and duct DAAMS.) However, TOCDF never went out of the requirements for the permit, but when the results were uncomfortable, they voluntarily stopped processing and began investigating the problem. TOCDF then came up with a solution, tested the solution out, and after receiving good results, have resumed processing of the VX.

## **VIII. Other Business**

### **A. Legislative Task Force – Dianne Nielson**

Dianne Nielson stated that over the last year there has been a Legislative Task Force looking at hazardous and radioactive commercial waste facilities, including evaluation of fees and associated issues. The Task Force is in place by statute for two years and has now finished their first year. They will prepare their final report for the Legislature in November of 2004. There is an additional year of work that will resume after the Legislative session.

Some legislation has risen from the Task Force efforts. Also, there has also been a request for an audit. The audit will be performed by the Legislative Auditor's Office and an initial meeting has taken place. The focus for the audit request will consist of three categories that will be looked into: 1) The audit will look at DEQ's oversight of commercial facilities. (How well DEQ is doing in meeting the requirements of the law as facilities are regulated); 2) The adequacy of the laws. (Is there something that isn't required by law that should be?) The bases for primacy for DEQ for the Division's of Air Quality, Division of Solid and Hazardous Waste, Division of Radiation Control and the Division of Water Quality. (Primacy is assigned from the Federal

Government at the EPA level or at the Nuclear Regulatory Commission Level.); and 3) Fees. Fees are collected in two areas: 1) statutory fees are collected on the volumes of hazardous and radioactive mixed waste, solid waste entering the commercial facilities; and 2) a variety of fees that are dedicated credits set by the legislature for reviews of permits, etc. Fees will be reviewed for adequacy of the fees to meet DEQ needs in performing those programs and how the fees are being utilized.

The audit deadline will be the first part of May 2004. Audit findings will be given to the Task Force and to the Legislative Management Committee.

Carlton Christensen asked the nature of the audit? Dianne Nielson stated that sometime legislators are concerned because they feel they're getting conflicting information. What the Task Force is asking is that the auditors look at what the statutes say and provide them an answer. Ms. Nielson stated that the Department has worked well with the auditors in the past and will welcome the results. All of the Task Force members are legislators. More information can be found at [www.le.utah.gov](http://www.le.utah.gov). Dianne Nielson stated that once the audit is finalized, the Board Members would receive a copy of the findings. Cullen Battle suggested Board discussions after the May report.

## **B. Legislative Update – Dennis Downs**

To date, two bills have been filed that relate to waste management issues.

- 1) SCR1, Senate CONCURRENT RESOLUTION 1, sponsored by Senator Thomas V. Hatch. This bill involves a commercial solid waste facility that has a permit to construct a landfill. This facility does require the Legislature and the Governor's approval for the operation of the landfill to receive specified nonhazardous solid waste. The site is located near the town of Green River.
- 2) HB 13, Hazardous Waste and Non-Hazardous Solid Waste Fee and Tax Amendment, sponsored by Eli Anderson. This bill modifies provisions relating to hazardous waste and treated hazardous waste disposal fees and a tax on hazardous waste facilities and non-hazardous solid waste facilities. This bill terminates a \$28 per ton fee on treated hazardous waste, reinstates a \$14 per ton fee on treated hazardous waste, and terminates a gross receipts tax on certain hazardous waste facilities and non-hazardous solid waste facilities.

## **IX. Retirement of Marilyn Ratcliffe and Thomas Probert**

Dennis Downs announced Marilyn Ratcliffe's retirement. Marilyn was acknowledged for fourteen years of outstanding service to the Board and her exceptional service to the Division of Solid and Hazardous Waste. A plaque was given to Marilyn recognizing her for her exceptional service to the Board. Marilyn will be greatly missed. Arlene Lovato will be filling Marilyn Ratcliffe's position. Marilyn expressed appreciation for being able to work with the Board.

Dennis Downs also announced Tom Probert's retirement. A plaque was also given to Mr. Probert recognizing him for his outstanding contributions to the Board. Mr.

Probert will be moving out of the State of Utah. Mr. Probert expressed his appreciation for being able to work with highly qualified staff members and Board members.

**X. The next Board Meeting is scheduled for February 12, 2004.**

**XI. The meeting adjourned at 2:35 p.m.**